Supreme Court, U.S.
FILED
NOV 25 1991
OFFICE OF THE CLERK

No. 91-1069

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

SHEILA KNUBBE and DAVID ASLANI,

PETITIONERS,

v.

N.S. ASSOCIATES, dba NORTH SHORE APARTMENTS CO., etc.,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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*****

OUT OF FINANCIAL NECESSITY THE PETITIONERS HEREIN ARE PROCEEDING AS PRO SE LITIGANTS.

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QUESTIONS PRESENTED FOR REVIEW

I.

Whether in a summary eviction action for immediate possession of residential property, purportedly at the termination of a fixed-term lease, the absolute denial of equitable, meritorious and substantive defenses, including affirmative ones, such as those pertinent to retaliatory measures, breach of the state statutory warranties of habitability and fitness, civil rights violations and contract law, is violative of the tenant's right to the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States; and further is violative of the tenant's right under the First Amendment and the Seventh Amendment to the Constitution of the United States.

II.

Whether, in a civil action, the denial of the defendant's right to a trial by jury, which under the pertinent state

statute and court rule, has been timely and properly demanded and its fee has been paid to the trial court, is in violation of the defendant's rights under the First Amendment and the Seventh Amendment and the Fourteenth Amendment to the Constitution of the United States.

III.

Whether the judgment of a court should be declared void and not binding as a formal adjudication and thereby its enforcement would constitute violation of law under the First Amendment to the United States Constitution and the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, when such a judgment could not have been asserted as adjudication, as it has not been one of competent jurisdiction, as the court by the state statute and judicial decision has been clearly and absolutely ousted of

any jurisdiction in a court action in which specific legal assertion, such as civil rights violations, has been made.

IV.

Whether in a summary eviction action for possession of residential property, the immediate issuance of a writ of restitution and its execution forthwith, resulting in brutal eviction of a tenant and causing substantial injuries to his rights, dignity, person and property (being wantonly damaged and/or destroyed and/or stolen), is violative of the tenant's right to the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States; and further is violative of the tenant's right under the First Amendment and the Seventh Amendment to the Constitution of the United States.

PARTIES BELOW

The only parties to this proceeding in the court below are those indicated in the above-stated caption of this petition.

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WRIT of RESTITUTION, entered on January 27, 1989, by the Michigan 40th Judicial District Court, which was executed forthwith on the same date by the court officer of the same court.

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CORRESPONDENCE from the Respondent's counsel of the record, dated February 8, 1989, FALSELY ALLEGING that the Michigan 40th Judicial District Court had indicated to him that the Petitioners had failed to pay their RENT for the month of January 1989 into escrow with that court.

Appendix I

CERTIFICATION from the clerk of the Michigan 40th Judicial District Court, made on January 4, 1989, acknowledging the Petitioners' payment of $645.00 in form of a Cashier's Check, as their RENT for the month of January 1989 into escrow with that court in pursuant to the prior order of that court.

Appendix J

A duplicate of the Petitioners' Cashier's Check in the amount of 645 dollars and 00 cents, which on January 4, 1989, was paid as their RENT for the month of January 1989 into an escrow account with the Michigan 40th Judicial District Court, and its receipt.

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IN THE

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October Term, 1991

SHEILA KNUBBE and DAVID ASLANI,

PETITIONERS,

v.

N.S. ASSOCIATES, dba NORTH SHORE APARTMENTS CO., etc.,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

The Petitioners Sheila Knubbe and David Aslani respectfully pray that a writ of certiorari issue to review the Order of the Supreme Court of the State of Michigan denying Petitioners their meritorious Application for Leave to Appeal from the constitutionally infirm decisions, entered and affirmed by the Michigan lower courts, as to a possession judgement and an immediate writ of restitution and its

execution forthwith in a summary eviction action for possession of residential property.

OPINIONS BELOW

The Orders of the Michigan Supreme Court are set forth in Appendices A and B; the Order of the Michigan Court of Appeals is set forth in Appendix C; the Opinions and Orders of the Michigan Circuit Court for the County of Macomb are presented in Appendices D and E; the Writ of Restitution and Possession Judgment of the Michigan 40th Judicial District Court appear in Appendix F and Appendix G, respectively, to this Petition; none of the said orders or opinions have been published.

JURISDICTION

The Michigan Supreme Court's Order in this matter was issued on March 29, 1991. A timely Motion for Reconsideration was filed on May 31, 1991. The Michigan Supreme Court's denial of the said motion was issued on June 28, 1991.

On September 17, 1991, by its granting the Petitioners their application for an extension of time (No. A-207), this Court extended the time within which to file a petition for a writ of certiorari in the above-entitled cause of action to November 25, 1991. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT I TO THE UNITED STATES CONSTITUTION is set forth in Appendix K.

AMENDMENT VII TO THE UNITED STATES CONSTITUTION is set forth in Appendix L.

SECTION 1 OF AMENDMENT XIV TO THE UNITED STATES CONSTITUTION is set forth in Appendix M.

STATEMENT OF THE CASE

The case at bar concerns the landlord-tenant issues as to a summary eviction action for possession of residential property, resulting in immediate issuance of an infirm writ of restitution and its brutal execution forthwith on January 27, 1989, causing intentional and substantial injuries to the Petitioners' dignity, persons and property (which was literally thrown out into the street and onto the sidewalks and front lawn of their premises to be subjected to rain, ice, snow, frost and storm for three nights and four days of winter --causing at least $33,000.00 damages and $11,000.00 in valuable items stolen), in substantial violation of the Petitioners' rights under the pertinent Michigan court rules, statutes, judicial decisions and public policy, and also under the First Amendment, the Seventh Amendment and the Fourteenth Amendment to the United States Constitution; the harrowing ordeals that the Petitioners had

been subjected to throughout the proceedings of this cause in the courts below are indeed unusually cruel and shocking to the conscience of any just jurist or a fair-minded juror or even the average man.1/

On January 26, 1989, the Michigan 40th Judicial District Court, in the course of hearing as to the Respondent's summary eviction action for possession, DENIED the Petitioners their equitable and substantial constitutional rights to: (A) DISMISSAL of the CAUSE or its transfer to a proper forum of jurisdiction, (B) TRIAL by JURY, (C) POSSESSION of their premises as well as meritorious DEFENSES thereof, including their counterclaims and a meaningful opportunity to assert them, as it either summarily dismissed them as irrelevant or did not allow them to be asserted at all and (D) a stay of the writ for immediate restitution and thereby its

---

1/ Out of financial necessity the Petitioners have no alternative but to act herein in propria persona, as they have done so in the proceedings below.

execution forthwith.1/

The Petitioners were denied their constitutional rights, under the First Amendment and the Fourteenth Amendment, to a dismissal or transfer of the action to a forum of proper jurisdiction, as in Michigan, under the state statute and judicial decisions, a district court has been absolutely ousted of any jurisdiction in an action, as this one, in which the Petitioners had made an assertion of civil rights violations, as to discrimination based on national origin (Tr pp 29, 33; see pages 17-18 of this Petition); instead, the trial court ruled that the issue of discrimination was irrelevant in a summary eviction action for possession of property (Tr pp 29, 33) and also advised the Petitioners that "discri-

1/ The court even Denied the Petitioners their rights to a review of their written Motion to Dismiss and for Sanctions, Answer to Complaint and the Defendants' Affirmative Defenses and Counterclaims, including all of their constitutional rights (Transcript of the said hearing hereafter is referred to as Tr followed by the page number: Tr p 45).

mination per se is not illegal" (Tr p 48).

Further, the Petitioners were denied their constitutional rights, under the First Amendment and the Seventh Amendment and the Fourteenth Amendment, to a trial by jury, even though under the pertinent Michigan statute and court rule, they timely made a demand for it and paid its required fees to the trial court; upon the Petitioners' repeated demands for a trial by jury (Tr pp 18,19,51), the court ruled:

> I'm going to bifurcate the issues. We're going to proceed with hearing regarding the issue of possession. We'll set the issue of damages for jury trial. (Tr p 21)

Further, the Petitioners were denied their rights under Due Process to being served with a proper notice to vacate their premises and defenses thereof; they objected to the lack of such notice (Tr pp 5, 50, 51, 53); however, the court readily accepted the Respondent's false assertion that the Petitioners were "trespassers" and thereby "do not need to receive notice to vacate on an action that is commenced

for summary proceedings". (Tr p 54) 1/

Further, the Petitioners, were denied their constitutional rights and defenses thereof to possession of their premises until January 31, 1989, as they had timely paid their RENT in the amount of $645.00 into an escrow account with the court (see Appendices I & J); the Respondent while acknowledging that the Petitioners had been paying their "rent" into an escrow (Tr p 24), by leading one of its agents under examination on the witness stand, through its counsel misled the trial court into believing that January 1989 rent had not been paid:

> Q Have you accepted rent for the month of January, 1989?
> A Yes.
> Q You have? [while altering his voice, prodding the witness to provide him with his intended answer.]
> A No, we haven't. (Tr p 23) (Emphasis supplied.)

And the trial court readily accepted the

1/ When the Petitioners alerted the trial court as to repeated misrepresentation of the issues of fact and law by the Respondent's counsel, it advised them that counsel "is not under oath" (Tr p32).

Respondent's false claim (Tr p 23).

On February 8, 1989, in his alleging that the court had misled him into believing that the January 1989 rent had not been paid into escrow, which has been absolutely denied by the court, the Respondent's counsel advised the Petitioners:

> * * * The District Court indicates you failed to make the January, 1989 escrow payment. Accordingly, rent for January, 1989 in the sum of $645.00 has been subtracted from your security deposit * * * . (Emphasis supplied.) (See page 1 of Appendix H.)

Further, the Petitioners were denied their constitutional rights to possession and their defenses thereof as to their contractual rights, entitling them to holdover tenancy under a parol agreement (Tr p 47)1/ and the 21st paragraph within

1/ On January 15, 1988, prior to signing their lease, the Petitioners were given repeatedly emphatic assurance by the Respondent that upon the termination of their lease they could continue to lease on a MONTH-TO-MONTH basis as long as they tendered their rent; it was only because of such assurance that they entered into a contract, and bore expenses in the excess of $5,500.00 for moving, MANDATORY CARPETING, purchasing venetian blinds, repairing and making their apartment inhabitable.

their lease itself, which reads:

> 21. It is hereby agreed that in the event of the tenant herein holding over after the termination of this lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary. (Emphasis supplied.)

At no time any written agreement had been made contrary to the indicated clause.

Further, the Petitioners were denied their constitutional rights and defenses thereof, under the First and the Seventh Amendments, as to their being taken retaliatory measures against by the Respondent on various grounds.1/

Further, the Petitioners were denied

1/ The Respondents had done the following: (1) attempted to establish a tenant organization to safeguard their common concerns and welfare; (2) filed complaints with the various governmental agencies as to their apartment-related problems, bringing about the issuance of a "Notice of Violation Warning" against the Respondent; (3) filed complaints with the St. Clair Shores Police Department as to their receiving harassing telephone calls and as to the vandalization of their car; (4) informed the office of the Attorney General as to the Respondent's violation of the Michigan statute of Truth in Renting Act in its drawing the lease and (5) filed a complaint with the Michigan Department of Civil Rights, among others.

their constitutional rights and defenses thereof, under the First and the Fourteenth Amendments, to the defenses as to the violative nature of their lease. 1/

Further, the Petitioners were denied their constitutional rights, under the First Amendment and the Fourteenth Amendment, to have an access to: (A) an appellate court, as even though they advised the court on the record of their intention in making an appeal, to which the court responded: "I assumed that" (Tr p 42), and also within the 10-day period allowed under the Michigan court rule, they timely made their Claim of Right to Appeal from the trial court's infirm writ for immediate restitution and posted the required bond, by being immediately evicted, the

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1/ As the lease had been: (1) drawn in violation of the Michigan statutes of Truth in Renting Act and MCL 554.634; MSA 26.1138(34), by excluding certain clauses in the lease and also excluding its legal name and address from the lease and falsely claiming that "Management Corporation" was the "Landlord," (2) tampered with and altered termination date from January 15, 1989, back to December 31, 1988 (Tr p17).

Petitioners were denied their rights to preserve a stay of the said order; 1/ and (B) a just and proper appellate review of every and all of their presented appellate issues, particularly the constitutional ones; indeed, without considering all the substantial issues, set forth in detail in the appellate briefs of the Petitioners in

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1/ On January 27, 1989, within less than fourteen (14) hours after the entry of the infirm possessory judgment, the district court officer, and four armed policemen, accompanied by four movers (two of whom were the close personal friends of the presiding judge, the Honorable William Crouchman, who had congregated in his chamber the afternoon before) a locksmith and the Respondent's agents broke into the Petitioners' premises and literally threw their property out into the street; further, the Petitioners and a member of their family, were subjected to substantial physical and harrowing emotional and psychological cruelty and brutality, as for instance, that family member was subjected to profanity, physical abuse and threat of sexual assault and the Respondent David Aslani was apprehended and was thrown into the street deliberately UNCLOTHED (for allegedly moving his index finger to accompany it to make a statement to the trial court officer not to damage his heirlooms) to be manacled and paraded naked in the street to be humiliated in the eyes of his neighbors and the public at large and to be subjected to the ridicules of the Respondent's agents who found the whole spectacle entertaining.

their statement of facts and assignment of errors, encompassing the Petitioners' substantial rights not only under the applicable state court rules, statutes, precedents and public policy,but also under the U.S. Constitution as to the First, Seventh and Fourteenth Amendments,and being misled by the Respondent's misrepresentation of the issues of fact and law, in entering its Opinions and Orders affirming the trial court's possession judgment and the writ for immediate restitution,the circuit court first arbitrarily grouped the Petitioners' assignment of errors into two sets (see page 3 of Appendix E), and then as to the first set of appellate issues: possession, ruled that the decision in Frenchtown Villa v Meadors, 117 Mich App 683, 689; 324 NW2d 133 (1982) held bar, and thereby no defense was available (see pages 4-5 of Appendix E); and as to the Petitioners' timely payment of January 1989 RENT into escrow with the trial court (see Appendices I & J), which was acknowledged by even the Respondent as

RENT money (see Appendix H), and which standing alone entitled the Petitioners to possession of their premises until January 31, 1989, the circuit court infirmly ruled that "such a payment was not sufficient to establish an agreement to extend the lease" (see page 6 of Appendix E).

Further, as to the second set of the presented appellate issues, it ruled that:

> The second set of issues raised by defendants concern whether the District Court was correct in issuing an immediate writ of restitution. This court need not now address these questions * * *. (Emphasis supplied.) (See page 7 of Appendix E.)

Thus, the circuit court did absolutely deny the Petitioners their rights to even a a token review of the substantial constitutional issues, set forth in their assignment of errors; in justifying such an unconscionable violation, it held:

> A detailed examination of every argument is neither necessary, practical or [sic] appropriate (see page 3 of Appendix D).

In their making an appeal from the said Opinions and Orders of the circuit court to

the Michigan Court of Appeals, and subsequently to the Michigan Supreme Court, the Petitioners additionally made an appeal from the circuit court's denial to review their essential assignment of errors, particularly those regarding the substantial constitutional issues, and also made an appeal from its accepting the Respondent's violative reply briefs, which were filed dilatorily and defectively as to their forms and contents, which thereby had prejudiced the Petitioners' rights under both the Fourteenth Amendment and the applicable Michigan court rules, statutes, precedents and public policy. However, in denying the Petitioners' meritorious applications for leave to appeal from the erroneous opinions and orders of the circuit court, both the Michigan Court of Appeals and the Michigan Supreme Court let stand all the flagrantly abusuve improprieties committed in the lower courts at the outrageous expense of the patent violations of the Petitioners' substantial constitutional rights.

REASONS FOR GRANTING THE WRIT

Summary of Reasons

The Petitioners aver that this Court should grant them their petition for a writ of certiorari on the grounds that: (1) the Michigan Supreme Court, as the state court of last resort, by its denying the Petitioners their meritorious application for leave to appeal from the constitutionally infirm orders and opinions of the Michigan lower courts, has sanctioned a departure so far from the accepted and usual course of judicial proceedings by the state lower courts that calls for an exercise of this Court's power of supervision; (2) a Michigan court has decided an important question of federal law in a way that conflicts with the appellate decisions of this Court; (3) the Michigan Supreme Court, by its denying the Petitioners their said application, has declined to review a federal question which has been decided by a Michigan

appellate court in a manner that conflicts with the decisions of other state courts of last resort and the decisions of a number of United States courts of appeals and (4) a Michigan court has decided an important question of federal law, which has not been, but should be, settled by this Court; the issue presented herein has been resolved by this Court only by implication, but not sufficiently and unequivocally.

I.

THE MICHIGAN SUPREME COURT, AS THE STATE COURT OF LAST RESORT, BY ITS DENYING THE PETITIONERS THEIR MERITORIOUS APPLICATION FOR LEAVE TO APPEAL FROM THE CONSTITUTIONALLY INFIRM ORDERS AND OPINIONS OF THE MICHIGAN LOWER COURTS, HAS SANCTIONED A DEPARTURE SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY THE MICHIGAN LOWER COURTS THAT CALLS FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

As Justice John Marshall in Marbury v Madison, 1 Cranch 137,163 (1803) stated:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of the government is to

afford that protection. (Emphasis supplied.)

Further, Justice Marshall in quoting 3 Blackstone's Commentaries 23, stated:

> * * * 'it is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded.' Marbury at 163.

A court whose judgment is asserted as adjudication must have been one of competent jurisdiction. Cherokee Exp, Inc v Cherokee Exp, Inc, 924 F2d 603 (CA 6, 1991); Cohen v Outlet Market Co, 311 Mich 327; 18 NW2d 843 (1945); Teagan v Schram, 110 F2d 72 (CCA 6 1940); Reid v Gooden, 282 Mich 495; 276 NW 530 (1938). Thus, since as to the assertion of civil rights violations, the jurisdiction of the state district court has been clearly conferred by the state statute and judicial decision, which specifically gives the jurisdiction of the case to the state circuit court and specifically takes from the state district court its jurisdiction of the trial, and since the jurisdiction

is power to declare the law, and since the state district court has been ousted of all jurisdiction, the Michigan 40th Distich Court should not have proceeded in the case at bar and either should have dismissed the action for want of jurisdiction or should have transferred it to the state circuit court, as under Baxter v Gates Rubber Co, 171 Mich App; 431 NW2d 81, 83 (1988), which is a dispositive case, it was held that:

> * * * sec 801 of the Civil Rights Act vests the circuit court with jurisdiction of a specific subject matter, a private action for discrimination prohibited by the Civil Rights Act. This Court has previously held that sec 801 is more than a venue provision, conferring substantive jurisdiction to the exclusion of other forums. Littsey v Bd. of Governors of Wayne State University, 108 Mich App 406, 411-414, 310 NW 2d 399 (1981),lv den 413 Mich 882 (1982). The prohibitions against discrimination and the promotion of civil rights rise to the level of a clearly established public policy of this state. Regents of the Univ of Michigan v State, 166 Mich App 314, 328; 419 NW2d 733 (1988), leave pending [appeal gr in part 431 Mich 870; 429 NW2d 594; appeal dism]. We discern a legislative judgment that the policies underlying the civil rights

> legislation are of such importance that resort to circuit court is mandated in every case, even when potential damages are less than $10,000. A plaintiff seeking vindication of these policies through a private cause of action should have access to all of the procedural advantages and protections available only in the circuit.1 Because sec 801 is a specific grant of jurisdiction, reflecting substantive policy concerns, we hold that it takes jurisdictional provision of MCL 600.8301(1); MSA 27a.8301(1).
>
> ---
>
> "1 Some of the procedures used in district court could well prove disadvantageous to litigants forced to seek relief there. * * * " (Emphasis supplied.)

Thus, the judgment of the court of first instance in the instant case for want of competent jurisdiction could not have been asserted as adjudication and thereby should have been declared void and not binding as a formal adjudication and thereby its enforcement is violative of law under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment and also the First Amendment to the United States Constitution.

When a court is of competent jurisdiction, and is presiding over a summary eviction action for possession of the residential property and when discrimination is asserted, the tenant should be permitted to defend against such an eviction, as this Court in Shelley v Kramer, 334 US 1 (1948) held that racially restrictive covenants could not be enforced in court. Similarly in Abstract Investment Co v Hutchinson, 204 Cal App 2d 242; 22 Cal Rptr 309 (1962), it was held that such a defense is constitutionally required to be permitted, and since summary eviction actions are in derogation to common law and thereby anything less than strict adherence to the procedural requirements prescribed by the pertinent statutes, regardless of the degree of the prejudice or the smallness of the procedural breach, shall deprive the trial court of jurisdiction and compel dismissal; thus, under such judicial setting, the right to assert the civil

rights violations must not be denied.

Indeed, as to the summary nature of the eviction proceeding, in Pernell v Southall Realty, 42 USLW 4595, 40 L Ed 198 (Apr 24, 1974) this Court ruled that statutory summary action for repossession of property by landlord carries the right to a jury trial under Amendment VII to the United States Constitution, since a summary eviction proceeding is essentially a suit to recover possession of realty, which has been recognized at common law.

It is indisputable that in a civil action the fundamental interest of the litigant is that he be permitted to properly defend himself; thereby, a party to a lawsuit must be afforded meaningful opportunity to prepare his defenses, the right to have his arguments heard, and the right to take available appeals to remedy improprieties committed in the trial court; indeed, this Court as well as other courts on many occasions and consistently have reiterated the issue of fact and/or

law that the party to a court action not only has a fundamental interest in certain basic procedural rights in order to properly defend, but also has a fundamental interest in being afforded procedural privileges on an equal basis with other litigants who cannot reasonably be classified; indeed, in Barbier v Connolly, 113 US 27, 31 (1885) this Court stated that:

> "The Fourteenth Amendment * * * undoubtedly intended * * * that all persons * * * should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances, that no greater burden should be laid upon one than are laid upon others in the same calling and condition * * * .

The fundamental importance of equality in procedural treatment of litigants has been reiterated in Gulf, Colorado & Santa Fe Ry v Ellis, 165 US 150, 160 (1897), in which this Court held that:

> No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure the equality of rights which is the foundation of free government.

Other courts, as well, have insisted upon strict equality of treatment of litigants in court. See Republic Pictures v Kappler, 151 F2d 543, 547 (CA 8, 1945); aff'd, 327 US 757 (1946); Hocking Valley Coal Co v Rosser, 53 Ohio St. 12; 41 NE 263, 265 (1895).

The failure to exercise such mandated equality of treatment of litigants by the courts at times would result in substantial injustice to one of the parties, the case in point is a summary eviction action for immediate possession of residential property, resulting in immediate issuance of a writ of restitution and its brutal execution forthwith, causing intentional and substantial injuries to their rights, dignity, person and property (which in this action was wantonly damaged and/or

destroyed and/or stolen); such an eviction is violative of the tenant's rights both to the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, particularly because he has been denied his mandated rights to: (1) being served with a proper notice to vacate the premises, (2) possession of his residential unit for the time for which he has timely and properly tendered his rent, (3) holdover tenancy beyond the expiration of his lease under a parol agreement with his landlord and a specific clause within his lease, (4) a jury trial, provided by the state statute and court rule, which had been timely and properly demanded and for which the required fees had been paid into the trial court, (5) equitable, meritorious, substantive and constitutional rights to his defenses including counterclaims and a meaningful opportunity to assert them, (6) certain grace period, which in Michigan amounts to ten days, that

preserves a stay of the immediate execution of the writ of restitution, provided by the state court rule, in order to make an appeal from the infirm trial court's order for immediate restitution, (7) dismissal of the action or its transfer to a court of proper jurisdiction, when a court by the state statute and judicial decision has been clearly and absolutely ousted of any jurisdiction in a court action in which specific legal assertion, such as civil rights violations, has been made and (8) access to appellate courts for appellate reviews, among others.

II.

A MICHIGAN COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH THE APPELLATE DECISIONS OF THIS COURT.

The Fourteenth Amendment to the United States Constitution provides that no person shall be deprived of property without due process of law. The right of a tenant to possession of property has

been held to be a right protected by the due process clause. Mendoza v Small Claims Court, 49 Cal 2d 668, 672-73; 321 P2d 9 (1958); Mihans v Municipal Court, 7 Cal App 3d 479, 484-85; 87 Cal Rptr 17 (1970); see also Sniadoch v Family Finance Corp, 395 US 337 (1967); Lawson v Featherstone, 44 Wis 2d 712; 172 NW2d 20 (1970).

It is a basic constitutional law that when a defendant has defenses and counterclaims which he may legally raise and which are relevant to the proceeding, he must have an opportunity to raise them, as in American Sur Co v Baldwin, 287 US 156, 168; 77 L Ed 231, 239 (1932), this Court ruled that:

> Due process requires that there be an opportunity to present every available defense. (Emphasis supplied.)

The principle of procedural due process has been reiterated in numerous decisions, as for instance, in Mullane v Central Hanover Bank & Trust Co, 339 US 306, 314

(1950), in its outlining the fundamental requirements of procedural due process, this Court stated:

> An elementary and fundamental requirement of due process in any proceeding which is to be afforded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections * * * . (Emphasis supplied.)

In his dissenting opinion in Lindsey v Normet, 405 US 56; 92 S Ct 862; 31 L Ed 2d 36 (1972) and while directing himself to the constitutional infirmity of the summary proceeding action and the hardship that it has created for tenants, Justice Douglas wrote:

> This vital interest that is at stake may, of course, be tested in so-called summary proceedings. But the requirements of due process apply and due process entails the right "to sue and defend in the courts," a right we have described as "the alternative to force" in an organized society * * * . In essence the question comes down to notice and an opportunity to defend * * * . 405 US at 84-85, 31 L Ed 2d at 56-57 (citations and footnotes omitted).

Further, in Roller v Holly, 176 US 398,

408-13 (1900) in holding that the defendant was denied due process of law, this Court stated:

> That a man is entitled to some notice before he can be deprived of his liberty or property, is an axiom of law to which no citation of authority would give additional weight * * * .

Thus, the rules laid down in Roller and Mullane were that notice is constitutionally inadequate if it is not reasonably calculated to provide a defendant sufficient time in most circumstances to take appropriate steps to prepare and present his defenses. However, under Michigan binding judicial decision, Frenchtown Villa v Meadors, 117 Mich App 683; 324 NW2d 133 (1982), in a summary eviction action for immediate possession upon the expiration of the term of a fixed-term lease no notice is required prior to such an eviction and absolutely no defense is permitted.

Summary eviction action for immediate possession of property is in violation of

the right of possession, which is protected by due process; further, in addition to considerable hardship and costs for the evicted tenant, such a possession judgment would also have collateral effects on the tenant's other rights; for instance, the judgment may have a res judicata effect on issues litigated in the action; given such a possibility, compliance with the due process issues becomes that much more urgent in eviction actions for immediate possession of residential property. Therefore, the opportunity to defend must be allowed.

Indeed, as it was held by this Court in Sniadach, supra, and Goldberg v Kelly, 397 US 254; 90 S Ct 1011; 25 L Ed 287 (1970), due process requires a fair hearing prior to deprivation of property. Thus, in a long line of earlier cases this Court had consistently held that the Fourteenth Amendment to the United States Constitution prohibits the deprivation of

property, or a property right or interest, under color of state law.

Further, when the litigant is a tenant, one of his essential defenses which has been made available is his property interests in leased premises, particularly when he has timely and properly tendered his rent and is not in violation of any pertinent law, as when the owner of realty, leases same, he conveys an interest therein to the lessee, who becomes as much the owner of the right of possession of the leased premises as a grantee in a deed is the owner of the freehold. Dan Cohen Realty Co v National Savings and Trust Co, 125 F2d 288 (CA 6, 1942). Thus, a lease divests the owner for a given time of a certain estate in the realty, leaving to the owner a reversion. Mattingly's Executor v Brents, 155 Ky 570, 159 SW 1157 (1913); Moore v Brandenburg, 234 Ky. 400, 28 SW2d 477 (1930). Although a lessee's interest is purely possessory, it is nonetheless a valuable property right

within the meaning and protection of the Fourteenth Amendment of the United States Constitution.

It is noteworthy that the compliance with the available constitutional law becomes more urgent in actions of summary nature for immediate possession, which has been characterized as quasi criminal (see 35 American Jurisprudence 2d 891), and which further has been characterized to be a derogation of the common law and thereby must be strictly construed, and thereby lack of absolute adherence to the procedural requirements, prescribed by the statute for summary eviction, vitiates the jurisdiction of the court in such a proceeding or action.

> It is a general rule that statutes providing for possessory and summary remedies of a landlord against a tenant are in derogation of the common law and therefore to be strictly construed, and lack of strict pursuance of procedure prescribed by the statute vitiates the jurisdiction of the court in such an action or proceeding. 50 Am Jur 2d, Landlord and Tenant, Section 1227, page 111. (Emphasis supplied.)

To be sure, the questions presented herein demand judicial solution from this Court.

III.

THE MICHIGAN SUPREME COURT, AS THE STATE COURT OF LAST RESORT, BY ITS DENYING THE PETITIONERS THEIR MERITORIOUS APPLICATION FOR LEAVE, HAS DECLINED TO REVIEW A FEDERAL QUESTION WHICH HAS BEEN DECIDED BY A MICHIGAN APPELLATE COURT IN A MANNER THAT CONFLICTS WITH THE DECISIONS OF OTHER STATE COURTS OF LAST RESORT AND THE DECISIONS OF A NUMBER OF UNITED STATES COURTS OF APPEALS.

There are a number of United States court of appeals cases whose decisions are in conflict with the Michigan holding in Frenchtown, supra. In Edwards v Habib, 130 US App DC 126; 397 F2d 687, cert den 393 US 1016; 89 S Ct 618; 21 L Ed 2d 560 (1968), which constitutes a landmark decision, as to recognizing the tenant's right to a defense when a tenant's landlord is taking retaliatory measures against him through eviction action as a reprisal for the tenant's exercising his rights under the First Amendment to the United States Constitution, in reversing

the decision of the lower court, it was held that:

> * * * it was the intent of Congress, which directed enactment of District of Columbia housing code, that, while landlord might evict for any legal reason or for no reason at all, he was not free to evict tenant in retaliation for tenant's report of housing code violations to the authorities. USCA Const Amends 1, 5, 14. (Emphasis supplied.)

Other states have imposed the Edwards' restraint on landlord reprisals when tenants seek to better their housing conditions; see Robinson v Diamond Housing Corp, 150 US App DC 17; 463 F2d 853 (1972) and Golphin v Park Monroe Associates, __ US App DC __, 353 A2d 314 (1976), in where it was held that refusal to allow tenant to continue on month-to-month basis departed from an established practice of the landlord, and thereby the retaliation defense was recognized.

In McQueen v Druker, 438 F2d 781 (CA 1, 1971), in which a Section 1983 of the Civil Rights Act of 1871 was taken in response to retaliation, a landlord was

compelled to renew an expired tenancy.

Further, there are holdings of the state courts of last resort that are in conflict with the Michigan decision in Frenchtown, supra; such decisions have imposed the Edwards' restraint on landlord reprisals when tenants seek to better their housing conditions; see Schweiger v Superior Court of Alameda County 3 Cal 3d 507; 90 Cal Rptr 729; 476 P2d 97 (1970); Windward Partners v Delos Santos, 59 Haw 104; 577 P2d 326 (1978); Dickhut v Norton, 45 Wis 2d 389; 173 NW2d 297; 40 ALR3d 740 (1970); Clore v Fredman, 59 Ill 2d 20; 319 NE2d 18 (1974); Barela v Superior Court, 30 Cal 3d 244; 178 Cal Rptr 618; 636 P2d 582 (1981), in which defense is available under the common law doctrine of retaliatory eviction and under Cal. Civ. Code section 1942.5(c), which prohibits retaliation for a tenant's exercise of "any rights under the law"); Criss v Salvation Army Residences, (W Va); 319 SE2d 403 (1984); Parkin v Fitzgerald, 307

Minn 423; 240 NW2d 828 (1976).

In Scofield v Berman & Sons, Inc, 393 Mass 95; 469 NE2d 805 (1984); app dismd (US); 105 S Ct 1157; 84 L Ed 2d 311, some of whose issues of fact and law are analogous to those in the case at bar, the lessor's refusal to follow its policy of permitting lessees to remain as tenants at will following expiration of their leases in the case of a tenant who had reported lessor's violation of rent control laws was held to be in violation of Mass Gen Laws Ann, ch 186, sec 18.

In Van Buren Apartments v Adams, 145 Ariz 325; 701 P2d 583 (1984) the Ariz Rev Stat, sec 33-1381 was construed to permit tenant to interpose defense in summary proceeding that landlord's failure to renew lease was retaliatory; however, in Frenchtown, supra, the landlord's refusal to renew fixed-term tenancy is not covered by Mich Comp Laws Ann, sec 600.5720, which prohibits retaliatory termination of lease.

While various states have adopted a

summary procedure to facilitate evictions, the law dealing with such procedures has been static and inflexible; nonetheless, it has been subject to continuous modification in some states, as for instance, in Schubert v Lowe, 193 Cal 291; 223 P 550 (1924), equitable defenses were allowed to be raised; in Abstract, supra, defenses based on racial discrimination were allowed; in Schweiger, supra, defenses based on retaliatory motive were permitted; in Javins v First National Realty Corp, 138 US App DC 369; 428 F2d 1071 (1970); cert den, 400 US 925 (1970) and Lemle v Breeden, 51 Haw 426; 462 P2d 470 (1969) and Reste Realty Corp v Cooper, 53 NJ 444; 251 A2d 268 (1969), a defense as to habitability was permitted; further, in Longenecker v Hardin, 130 Ill App 2d 468; 264 NE2d 878 (1970) and Brown v Southall Realty Corp, __ US App DC __ ; 237 A2d 834 (1969) and Uhlmann v Kin Daw, 97 Or 681, 193 P 435, 437-38 (1920) a defense as to illegality of a lease was

allowed.

Further, in several jurisdictions courts have recently commenced to impose an "implied warranty of habitability" on residential landlords, the standards of the warranty to be governed by local housing codes. See Reste, supra; Marini v Ireland, 56 NJ 130, 265 A2d 526, 40 ALR3d 1356 (1970); Lemle, supra; Javins, supra; Green v Superior Court of San Francisco, 10 Cal App 3d 616; 111 Cal Rptr 704; 517 P2d 1168 (1974); Jack Spring v Little, 50 Ill 2d 351; 280 NE2d 208 (1972); Boston Housing Authority v Hemingway, 363 Mass 184; 293 NE2d 831 (1973); Evans v Does, 283 So 2d 804; La App (1973); Rome v Walker, 28 Mich App 458; 196 NW2d 850 (1972); Fritz v Warthen, 298 Minn 54; 213 NW2d 339 (1973); Academy Spires, Inc v Brown, 111 NJ Super 447; 268 A2d 556 (1970); Foisy v Wyman, 83 Wash 2d 22; 515 P2d 160 (1973).

Further, it has been held that the doctrine of retaliatory eviction can be

asserted as an affirmative defense; under this doctrine, where the landlord appears to properly invoke the eviction procedure but is in fact attempting to retaliate against the tenant for exercising certain rights protected by statute or the Constitution, the eviction cannot be allowed. This affirmative defense is now permitted in several jurisdictions. See Edwards, supra; Dickhut, supra; Hosey v Club Van Cortland, 299 F Supp 501(SD NY, 1969); McQueen, supra; Schweiger, supra. However, in Michigan under the holding of Frenchtown, supra, which has been based upon a clear misinterpretation of the pertinent Michigan statute, when a summary action has been taken at the termination of a fixed-term lease, absolutely no defense is available.

IV.

A MICHIGAN COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW, WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT; THE ISSUE PRESENTED HEREIN HAS BEEN RESOLVED BY THIS COURT ONLY BY IMPLICATION, BUT NOT SUFFICIENTLY AND UNEQUIVOCALLY.

The tenant's interest in retaining possession has been recognized by courts across the country as being at least as important as the landlord's interest in protecting his investment. As for instance, in quoting from Hocking, supra, Mendoza, supra, stated that the "right to retain property already in possession is as sacred as the right to recover it, when dispossessed"; indeed, the right to retain possession of rented housing has been protected from any retaliatory eviction as a reprisal for the tenant's exercising his right in reporting certain housing violations to a governmental agency; see Edwards, supra, and Dickhut, supra. 1/ Further, the right to retain property already in possession has been protected

1/ Although the Edwards court extensively discussed the issue of a judgment for possession under retaliatory circumstances, it reserved decision as to whether the granting of a judgment for possession under such circumstances would constitute state action in violation of right under the First Amendment to the Constitution or the right to petition government and report violations of law.

from retaliation because of the tenant's engagement in forming a tenant organization. McQueen, supra. Further, the right to retain premises already in possession has been protected from eviction prior to a full hearing on the merits of the tenant's defense. Jordan v Talbot, 55 Cal 2d 597; 361 P2d 20 (1961); Mihans, supra. Further, the right to retain residential property has been protected from eviction because of the tenant's race. Abstract Investment Co, supra. Indeed, a tenant's claim to retain his premises should be considered as "a right not to be uprooted," since when "a house becomes a home through its occupants settling in and making it so, then the societies recognition to a 'right to housing' must encompass some reciprocity not to be involuntarily removed from housing already occupied. Acknowledgement of such claims would reflect sensitivity to the severe inconvenience of moving * * * . It would also reflect sensitivity to

the trauma of being uprooted--of being torn away from a structure, surroundings, and neighborhood with which one's existence may be interpenetrated in countless important ways". Michelman, The Advent of a Right to Housing; A Current Appraisal, 5 Harv Civ Rights-Civ Lib L Rev 207, 219 (1970). Thus, as the above cited authorities amply and aptly demonstrate, the right of the individual householder to retain peaceful possession of his premises, his home, consistently has been treated as a fundamental interest.

Since Michigan, similar to many other states, on the one hand has recently reformed its law governing the landlord-tenant relationship, through legislative acts (such as the retaliatory eviction statute, MCL 600.5720; MSA 27A 600.5720 and Truth in Renting Act, MCL 554.631; MSA 26.1138(31)), and thereby has intended to create and/or make available new defenses as to the landlord's right to recover possession of the property, and on the

other hand Michigan, by its judicial decision, such as the holding in Frenchtown, supra, still allows a landlord to forcefully , and often unscrupulously, prosecute a summary eviction procedure, since no defense is available and no notice to evict; thus, a clash between these two legal concepts has been created whose very nature is constitutional and whose resolution, short of a definitive pronouncement from this Court, is not in sight, while in Michigan, and many other states, the urgent legal question as to how the newly created rights of tenants can be adequately asserted in a summary proceeding still lingers on, and that at the dire expense of the tenant's rights,as tenants are systematically and summarily denied their substantial constitutional rights to assert their defenses; indeed, the time is ripe for such a pronouncement by this Court, as the reason that this Court proffered in its declining to pronounce a resolution to the said issue

in Lindsey, supra, was that the tenant's rights at the time of reviewing that case had not yet been created in Oregon and thereby there was no constitutional ground based on which that state could not provide a summary procedure.1/

Although from the Lindsey decision one can conclude that in a situation in which a state has yet to adopt a reform as to making defenses available, through either statute or judicial decision, in an action as to the landlord-tenant relationship, one can choose not to provide defenses based on the habitability of the premises or retaliatory measures on the part of landlord against the tenant being sued in a summary action for eviction; however, one can also conclude that this Court in Lindsey, supra, originally did not

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1/ It is worth noting that subsequent to Lindsey, supra, review by this Court, the Supreme Court of Oregon has construed Or Rev Stat sects 91.815, .865 to permit recovery for emotional or psychological harm suffered from a landlord's willful, retaliatory acts in Brewer v Erwin, 287 Or 435; 600 P2d 398; 6 ALR4th 503 (1979).

consider a situation in which a state had either adopted substantive tenant reforms or had created case law defenses to an eviction action; thus, an essential question that arises here is whether a summary eviction proceeding is a viable remedy when numerous defenses and counterclaims can be asserted by the defendant tenant.

Indeed, very few courts have directed themselves to the specific issue of the constitutionality of a summary eviction proceeding; those courts that have done so generally have suggested that the addition of new defenses made available in the summary proceeding has in no way prejudiced the rights of the landlord; see, Pernell, supra; Fritz, supra; Green, supra. However, rarely has any legal forum, particularly this Court, concerned itself specifically with the issue as to whether a defendant tenant is able to adequately assert his newly available defenses in the context of a summary

eviction action for immediate possession of residential property.

CONCLUSION

For the reasons set forth above, this Honorable Court should issue a Writ of Certiorari.

Further, since the blatant violations of the Petitioners' rights secured by the United States Constitution, are so outrageous to anyone and are so absolutely shocking to the appellate conscience of any court, should this Court elect not to address the issues presented in this petition at the present time, it is requested that the writ issue and that the matter be remanded to the Michigan Supreme Court for redetermination and subsequent reversal of the judgment entered and thereby the entry of judgment in favor of the Petitioners, and also for declaring the holding of Frenchtown, supra, unconstitutional and thereby invalid so far as it denies a defendant tenant the

right to raise defenses, including affirmative ones, and be served with a notice to evict in a summary eviction action for possession of premises upon the termination of a fixed-term lease.

Further, this Court should grant the Petitioners any other relief that it may deem as just and proper.

Respectfully submitted,

Sheila Knubbe and David Aslani

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Dated: November 22, 1991.

APPENDIX A

MICHIGAN SUPREME COURT

ORDER

Entered: June 28, 1991

MICHIGAN SUPREME COURT
Lansing, Michigan

89366
(24)

Michael F. Cavanagh
Chief Justice
Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

N S ASSOCIATES, d/b/a/
NORTH SHORE APARTMENTS CO,
BY ITS AGENT, MANAGEMENT CORPORATION,
Plaintiff-Appellee,
v.

SC: 89366
COA: 127178
CC: 89-492-AV
DC: 89-11132-LT

Sheila Knubbe and David Aslani
Defendants-Appellants.
_____/

On order of the Court, the motion for reconsideration of this Court's order of March 29, 1991, is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

10625

SEAL OF THE MICHIGAN SUPREME COURT.
LANSING.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

June 28, 1991 (Signed) Corbin R. Davis
Clerk

APPENDIX B

MICHIGAN SUPREME COURT

ORDER

Entered: March 29, 1991
MICHIGAN SUPREME COURT
Lansing, Michigan

89366

Michael F. Cavanagh
Chief Justice
Charles L. Levin
James H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

N S ASSOCIATES, d/b/a/
NORTH SHORE APARTMENTS CO,
BY ITS AGENT, MANAGEMENT CORPORATION,
Plaintiff-Appellee,
v.

SC: 89366
COA: 127178
CC: 89-492-AV
DC: 89-11132-LT

Sheila Knubbe and David Aslani
Defendants-Appellants.
_____/

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

90326

SEAL OF THE MICHIGAN SUPREME COURT. LANSING.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

March 29, 1991 (Signed) Corbin R. Davis
Clerk

APPENDIX C

Court of Appeals, State of Michigan

ORDER

N.S. Associates
v
David Aslani, et al

Robert J. Danhof,
C.J., Presiding Judge
Walter P. Cynar
Kathleen Jansen
Judges

Docket # 127178

L.C.# 89-000492 AV

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to appeal is DENIED for lack of merit in the grounds presented.

The motion to adjourn is DENIED as moot.

(Signed) Robert J. Danhof

A true copy entered and certified by Norbert G. Jaworski, Chief Clerk, on

MAY 29,1990 (Signed) Norbert G. Jaworski
Chief Clerk

SEAL of STATE OF MICHIGAN
COURT OF APPEALS

CA44r489

APPENDIX D

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

N.S. ASSOCIATES d/b/a NORTH SHORE APARTMENTS CO. BY Its Agent, MANAGEMENT CORPORATION,

Plaintiff/Appellee,

vs. File No. 89-492-AV

DAVID ASLANI and SHEILA KNUBBE,

Defendants/Appellants,
_____/

OPINION AND ORDER

This matter is before the Court on defendants' motion for rehearing, sanctions and costs pursuant to MCR 2.119(F).

Defendants seek rehearing of the Court's Opinion and Order of September 29, 1989, sanctions against plaintiffs and an award of costs.

In its Opinion of September 29, 1989, the Court reviewed the merits of the appeal and affirmed the judgment of possession and writ of restitution entered

in the District Court. In lengthy and rambling pleadings, defendants assert the Court erred in its prior Opinion and that plaintiffs have engaged in improper conduct to mislead the Court.

In order to obtain relief in a motion for rehearing under MCR 2.119(F)(3) the moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. The Court orally granted defendants an opportunity for a rehearing and, having reheard the matter, is not convinced that palpable error has occurred by which the Court and the parties have been misled such that a different disposition of this appeal is necessary. Defendants largely bring the same arguments in their motion for rehearing as were presented when the Court reviewed the merits of their appeal. Defendants demand that the Court expressly

analyze each and every assertion made by them in their pleadings. A detailed examination of every argument is neither necessary, practical, or appropriate. The Court has examined defendants' assertions both before its prior Opinion and in considering this motion and remains satisfied that the District Court did not err in entering the judgment of possession and writ of restitution.

It follows from this determination that defendants' request for sanctions and costs are not appropriate under the circumstances.

For the reasons set forth above, defendants' motion for rehearing, sanctions and costs should be and the same hereby is DENIED.

IT IS SO ORDERED.

(Signed) Michael D. Schwartz
MICHAEL D. SCHWARTZ, Circuit Court Judge

MDS/lc
DATED: FEBRUARY 2, 1990

cc: David J. Bennett, Esq.
David Aslani and
Sheila Knubbee [sic], In Pro Per

APPENDIX E

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF MACOMB

N.S. ASSOCIATES d/b/a NORTH SHORE APARTMENTS CO. BY Its Agent, MANAGEMENT CORPORATION,

Plaintiff/Appellee,

vs. File No. 89-492-AV

DAVID ASLANI and SHEILA KNUBBE,

Defendants/Appellants,
_____/

OPINION AND ORDER

Defendants appeal as of right from a judgment of possession and an immediate writ of restitution in favor of the plaintiff landlord entered in the 40th District Court, the Honorable William A. Crouchman, presiding.

It appears from the record that the defendants entered into a lease agreement with plaintiff for the rental of an apartment. The lease was for a term of one year beginning on January 1, 1988 and ending on December 31, 1988. During the

term of the lease relations were not good between the parties and included an action for nonpayment of rent, the outcome of which is still pending in a separate appeal to this Court.

Approximately three months prior to the expiration of the lease period plaintiff claims to have attempted to notify defendants that they would not be allowed to remain after the expiration of the lease. Defendants claim they did not receive this notice and in fact notified plaintiff at about the same time of their intention to remain in possession after the expiration of the lease term. Subsequently, in proceedings before the Circuit Court on the appeal of the non-payment action, plaintiff sought an order of possession which was denied because it was not relevant to the action then before the Court.

On January 3, 1989, plaintiff filed the present action seeking possession and an

immediate writ of restitution. At trial, the District Court found that, based upon the testimony of the apartment manager and the findings in the prior non-payment action, plaintiff was the owner of the premises and was entitled to possession as of the termination of the lease period. The District Court also found that an immediate writ of restitution was appropriate pursuant to MCR 4.201(L)(2). In accordance with the judgment defendants were evicted the following day.

On appeal, defendants raise several issues concerning the judgment of the District Court. Although the arguments are not completely clear, this Court will attempt to address all of the questions raised by defendants. It appears that the arguments can be reduced to two essential questions. First, did the District Court correctly decide that plaintiff was entitled to possession? Second, was the District Court correct in issuing an

immediate writ of restitution?

Considering the first the question of possession, it is clear that the expiration of a written lease period ends a tenants right of possession, absent an agreement to extend the period. See Frenchtown Villa v Meadors, 117 Mich App 683, 689; 324 NW2d 133 (1982). This applies regardless of whether any notice was given. Defendants do not deny, and expressly admitted before the District Judge, that the written lease period had expired. This was the basis for the determination that plaintiff was entitled to possession and standing alone is a sufficient basis for such a finding.

Defendants argue that they were improperly denied the opportunity to raise the defense of retaliatory eviction. However, it has been held that this defense is not available in a summary proceeding following the expiration of a fixed-term-lease. Frenchtown villa, 117

Mich App 689.

Defendants also argue that plaintiff failed to establish ownership of the property which is essential to a judgment of possession. There was testimony for the District Judge by employees of plaintiff indicating the required ownership. Furthermore, the question of ownership appears to have been more thoroughly addressed at the separate trial between these same parties for non-payment of rent. There was clearly a sufficient basis for the District Court to conclude that plaintiff was, in fact, the owner of the disputed premises.

Defendants next argue that they had both written and oral agreements allowing them to holdover from month to month at the expiration of their lease. This Court need not address whether any such agreement in fact existed. A month to month tenency [sic] created by holding over is terminable upon one month's

notice. Auto Parts v J. Smith Beverages, 309 Mich 735; 16 NW2d 141 (1944). Plaintiff presented evidence of at least three occasions on which defendants were notified that they would not be allowed to continue in possession. Clearly the District Court could have concluded that the notice given defendants, ended any right to holdover.

Another argument raised by defendants is that they paid rent for January 1989 and its acceptance created a month to month tenancy. Plaintiff denies accepting any such rent payments. It appears that the payments were paid to the District Court in order to preserve a stay of proceedings in the separate action between theses [sic] parties. Obviously, there was no direct acceptance of rent payments by plaintiff and these payments are not sufficient to establish an agreement to extend the lease.

Finally, defendants argue that

plaintiff, violated the Truth in Renting Act, discriminated against them and failed to keep their apartment in adequate repair. However, defendants do not explain how any of these allegations established their right to continued possession. As a result it is the opinion of this Court that defendants have not presented any basis for disturbing the District Court's finding that Plaintiff was entitled to possession.

The second set of issues raised by defendants concern whether the District Court was correct in issuing an immediate writ of restitution. This Court need not now address these questions, given the finding above that plaintiff was entitled to possession. Plaintiff subsequently gained possession in a lawful manner, based upon the writ of restitution, and that possession cannot now be disturbed.

For the foregoing reasons, the judgment of possession and writ of restitution of

the District Court should be and the same hereby are AFFIRMED.

For the foregoing reasons, the judgment of possession and writ of restitution of the District Court should be and the same hereby are AFFIRMED.

Taxable costs on appeal are awarded to plaintiff. IT IS SO ORDERED.

(Signed) Michael D. Schwartz

MICHAEL D. SCHWARTZ, Circuit Court Judge

MDS/lc

DATED: SEPTEMBER 29, 1989

cc: David J. Bennett, Esq.
David Aslani and
Sheila Knubbee [sic], In Pro Per
Hon. William A. Crouchman

APPENDIX F

WRIT OF RESTITUTION
LANDLORD/TENANT - LAND CONTRACT

STATE OF MICHIGAN CASE NO.
40TH JUDICIAL DISTRICT 89-11132-LT

27701 JEFFERSON ST. CLAIR 445-5200
SHORES, MI 4808
Court address Court telephone no.

Plaintiff name and address
N.S. Associates d/b/a North Shore
Apartments, by its Agent
Management Corp.
c/o Plaintiff's Attorney

Plaintiff's attorney, bar no., address and telephone no.
DAVID J. BENNETT P10690
24800 NORTHWESTERN Suite 408
Southfield MI 48075 355 3344

Defendant name(s) and address(es)
David Aslani
Sheila Knubbe
321 Northshore Drive
St. Clair Shores, MI 48080

APPLICATION

The undersigned makes application for a writ of restitution and states:

1. On Jan. 26, 1989 judgment was entered against Defendant(s), and Plaintiff was awarded possession of the following described property: 321 NORTHSHORE DRIVE ST. CLAIR SHORES, MI 48080

2. No payment has been made on the judgment and/or no rent has been received since the date of judgment, except the sum of $ NONE received under the following conditions: N/A

3. The party awarded judgment has complied with its terms.

4. The time stated in the judgment to precede the issuance of a writ of restitution has elapsed.

I declare, under penalty of contempt of court, that to the best of my knowledge, information and belief, there is good ground to support the contents of this pleading.

Date Jan. 27, 1989

SEAL -- THE 40TH DISTRICT COURT OF THE STATE OF MICHIGAN

(Signed) David J Bennett P10690

Signature of Plaintiff/Attorney, Bar no.

24800 Northwestern suite 408

Address

Southfield, MI 48075 355 3344

City, state, zip Telephone no.

WRIT

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

To the Court Officer: Based upon the facts set forth in the above application, you are commanded to remove the above-named Defendant(s) and other occupants from the premises described, and to restore Plaintiff to peaceful possession.

1/27/89 (Signed) W.A. Crouchman

Date issued District Judge

NOTE: This writ must be served within 60 days of the issuance date.

WRIT OF RESTITUTION, LANDLORD-TENANT, LAND CONTRACT, DEFENDANT'S COPY

APPENDIX G

JUDGMENT
LANDLORD - TENANT

STATE OF MICHIGAN
40th JUDICIAL DISTRICT

CASE NO.
89 11132 LT

Court address
27701 Jefferson,
St. Clair Shores,
Michigan 48081

Court telephone no.
445 5200

Plaintiff N.S. ASSOCIATES d/b/a NORTH SHORE APARTMENTS CO. BY IT'S AGENT, MANAGEMENT CORPORATION

v

Defendant(s) DAVID ASLANI & SHEILA KNUBBE

N.S. ASSOCIATES d/b/a NORTH SHORE APARTMENTS CO. BY IT'S AGENT, MANAGEMENT CORPORATION
c/o Josephson, Tennen, Haron & Bennett, attys.
24800 Northwestern No. 403
Southfield, Michigan 48075

Plaintiff/Attorney __ Personal Service

David Aslani
Sheila Knubbe
321 Northshore Drive
St. Clair Shores, Michigan 48080

Defendant/Attorney __ Personal Service

THE COURT FINDS:
by X hearing __ default __ consent*

POSSESSION JUDGMENT

1. __ The plaintiff has a right to possession.
2. __ There is now due to plaintiff:
   a. Rent to retain possession $_____
   b. Costs $_____
   c. Total $_____
3. __ The defendant has a right to possession.

TO THE DEFENDANT:

4. __ An order evicting you (writ of restitution) will be issued unless you pay plaintiff or the court the amount due in item 2.c. above, or unless you move out by _____.
Date

5. X An order evicting you (writ of restitution) will be issued on or after Jan 26, 1989 unless you move.
Date

6. __ You may be liable for money damages after you move if additional rent is owed or if there is damage to the property.

7. Acceptance of partial payment of the total amount due in item 2.c. above __ will __ will not prevent issuance of an order evicting you (writ of restitution).

8. __ No money judgment is entered at this time.

MONEY JUDGMENT

9. __ Possession judgment has previously been entered.

10. __ A money judgment is entered as follows:
   a. Damages $ _____
   b. Costs $ _____
   c. Total $ _____
This judgment will earn interest at

statutory rates.

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11. FURTHER ORDERS:

---

12. YOU ARE ADVISED that you may file a motion for a new trial, a motion to set aside a default judgment, or file an appeal and appeal bond. This must comply with all court rules and must be filed in court by Feb 4, 1989.
Date

You may want legal help.

January 26, 1989

(Signed) W. A. Crouchman
District Court Judge Bar no.

CERTIFICATE OF MAILING: I certify that on this date a copy of the above judgment was mailed to plaintiff and to defendant at the last address shown in this file by ordinary mail, unless otherwise indicated.

1-26 89 Janet Pastiva
Date Deputy Clerk

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*Approved:

_____

_____
Date Plaintiff/Attorney

_____

_____
Date Defendant/Attorney

DCH 105 (7/85) JUDGMENT, LANDLORD/TENANT
MCR 4.201(K)(1)(d)

APPENDIX H

JOSEPHSON, TENNEN, HARON & BENNETT
ATTORNEYS AT LAW
24800 NORTHWESTERN HIGHWAY
SUITE 408
SOUTHFIELD, MICHIGAN 48075
TELEPHONE 313 355-3344
TELECOPIER 313 355-5547

HARVEY F. TENNEN
DAVID L. HARON
DAVID J. BENNETT
WILLIS C. LILLARD

JOEL W. JOSEPHSON
(1905-1982)

FEBRUARY 8, 1989

Ms. Sheila Knubbe
P.O. Box 80782
St. Clair Shores, Michigan 48080

RE: N.S. Associates v. Aslani & Knubbe

Dear Ms. Knubbe:

I am in receipt of your letter of February 4, 1989. My client did not receive your January, 1989 rent. The District Court indicates you failed to make the January, 1989 escrow payment. Accordingly, rent for January, 1989 in the sum of $645.00 has been subtracted from your security deposit of $967.50 and the balance is enclosed.

As to the five items you have requested

for return, contrary to the lease, you made alterations to the apartment by installing locks, globes or shelving. These items cannot be removed without leaving a void or damage to where they were attached. They have become affixed to the premises and must remain.

Yours very truly,

JOSEPHSON, TENNON, HARON & BENNETT

(Signed) David J. Bennett

David J. Bennett

DJB:jc
Encl. (1) Check #3197 -Management Corporation $322.50
(2) Notice of Damages

CC: N.S. Associates

APPENDIX I

CERTIFICATION FROM THE CLERK OF THE MICHIGAN 40TH DISTRICT COURT

I, JANET PASTIVA, DO HEREBY CERTIFY THAT THE COURT HAS RECEIVED THE SUM OF $645.00 FROM DAVID ASLANI REPRESENTING ESCROW PAYMENT FOR THE MONTH OF JANUARY 1989.

(Signed) Janet Pastiva

Court Clerk

January 4, 1989

APPENDIX J

A duplicate of the Petitioners' Cashier's Check , which on January 4, 1989, was paid as their RENT for the month of January 1989 into an escrow account with the Michigan 40th Judicial District Court, and its receipt.

DATE	RECEIPT NUMBER	CASE NUMBER	PAID FOR	AMOUNT RECEIVED	RECEIVED OF
1-4-89	6112C	87-10302 LT	1st month's rent	$645	David Aslani

40th DISTRICT COURT
CITY OF ST. CLAIR SHORES
27701 EAST JEFFERSON
ST. CLAIR SHORES, MICHIGAN 48081
SMALL CLAIMS, LANDLORD-TENANT, CIVIL

PHONE 445-5282 - 445-5283

06112 C

SIGNATURE

SAFEGUARD BUSINESS SYSTEMS

RECEIPT

Cashier's Check

Standard Federal Bank
Savings/Financial Services
2401 W. Big Beaver Rd.
Troy, Michigan 48084

Date JAN 04 89

080-036142-3

Pay to the order of

THE 40TH DISTRICT COURT

24-7167/2724

Customer Copy

**********$645dollars and 00cents

Authorized Signature

Copy Not Negotiable

Remitter:
DAVID ASLANI
321 NORTHSHORE DRIVE, S.C.S. 48090

An indemnity bond may be required for replacement of this check

BEST AVAILABLE COPY

APPENDIX K

AMENDMENT I TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

APPENDIX L

AMENDMENT VII TO THE UNITED STATES CONSTITUTION

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

APPENDIX M

SECTION 1 OF AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX N

MICHIGAN COMPILED LAWS of 1970, MCL 600.5720; MSA 27A.5720, as to the

JUDGMENT FOR POSSESSION OF PREMISES FOR ALLEGED TERMINATION OF TENANCY; GROUNDS FOR NOT ENTERING; RETALIATORY TERMINATION OF TENANCY; PRESUMPTIONS; BURDEN, which provides in relevant part:

Sec. 5720. (1) A judgment for possession of the premises for an alleged termination of tenancy; shall not be entered against a defendant if 1 or more of the following is established:

(a) That the alleged termination was intended primarily as a penalty for the defendant's attempt to secure or enforce rights under the lease or agreement or under the laws of the state, of a governmental subdivision of this state, or of the United States.

(b) That the alleged termination was intended primarily as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of a health or safety code or

ordinance.

(c) That the alleged termination was intended primarily as retribution for a lawful act arising out of the tenancy, including membership in a tenant organization and a lawful activity of a tenant organization arising out of the tenancy.

* * *

APPENDIX O

MICHIGAN COMPILED LAWS of 1970, MCL 600.5738: MSA 27A.5738, as to the RIGHT TO A TRIAL BY JURY IN A SUMMARY PROCEEDING

Sec. 5738. Any party to summary proceedings may demand a trial by jury within the time and manner provided by court rule. Procedures for selecting, impaneling and otherwise governing jurors in such proceedings shall be the same as for a trial by jury in other civil actions in the same court.